IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 533 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDRA SHANABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
Mr. Dipen Desai, Asst. GOVERNMENT PLEADER for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, order or

direction quashing and setting aside the order of dismissal dated 22/24.4.96 passed by the D.S.P., Porbandar. It is also further prayed to reinstate the petitioner in service with all consequential benefits.

2. The main contention on behalf of the petitioner is that against the order of conviction passed by the competent Criminal Court appeal is pending before this Court and therefore the dismissal order could not have been passed by the respondents. The controversy in question is already covered by the decision of the Full Bench of this Court in the case of ***P.D. Waghela & Others vs. G.C. Raiger, Deputy I.G.P. & Others,*** reported in ***1994 (1) G.L.R. Page 240.*** Shri Dipen Desai, learned AGP has submitted that identical question has been considered by the Hon'ble Supreme Court in the case of ***K.C. Sareen Vs. C.B.I., Chandigarh***, reported in **AIR 2001 S.C. Page 3320.** He has further submitted that relying upon the aforesaid decision of the Hon'ble

Supreme Court, the learned Single Judge of this Court in the judgment dated 19th July 2005 delivered in the case of ***J.A. Khimsuria IMV, Vs. State of Gujarat & Anr.,*** on ***Special Civil Application No. 14805 of 2005*** has also considered the same and it is held that simply because the petitioner is enlarged on bail or the sentence is suspended that can never be considered as a ground by which it can be said that even the finding of conviction is also stayed or order of conviction is also stayed. In the present case, even it is not the case of the petitioner that the sentence is suspended. Under the circumstances and considering the aforesaid three decisions, and for the reasons stated in the aforesaid decisions, the contention on behalf of the petitioner, that in view of pendency of criminal appeal against the order of conviction the order of dismissal could not have been passed, cannot be accepted.

3. Shri Supehia, learned advocate appearing

on behalf of the petitioner has further submitted that there is one another point also involved in the present Special Civil Application, i.e., with regard to the authority of the respondent who has passed the order of dismissal. He has submitted that if ultimately the petitioner loses in the Criminal Appeal and the conviction is confirmed in that case liberty be reserved in favour of the petitioner to agitate the said point. That liberty is accordingly reserved.

4. For the reasons stated above, with the above liberty, the present petition is dismissed. Rule is discharged. No costs.

[M.R. Shah, J.]

rmr.